

The Honorable Robert J. Bryan

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

**REYNOLDS METALS COMPANY and
ALCOA INC.,**

Plaintiffs,

and

**NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA.,**

Plaintiff-in-Intervention

v.

**ALCAN INC. and ALCAN ALUMINUM
CORPORATION,**

Defendants.

No. C04-0175RJB

AGREED PRETRIAL ORDER

NOW COME Plaintiffs (Reynolds Metals Company and Alcoa Inc., collectively “Plaintiffs” or “Reynolds”) and Defendants (Alcan Inc. and Alcan Aluminum Corporation, collectively “Defendants” or “Alcan”) and, in accordance with the Court’s Local Rule 16.1, submit the following Agreed Pretrial Order for the Court’s consideration, in compliance with the December 16, 2005 Amended Order Setting Trial Date & Related Dates.

AGREED PRETRIAL ORDER – (No.: C04-0175RJB) - 1

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Riddell Williams P.S.
1001 FOURTH AVENUE PLAZA
SUITE 4500
SEATTLE, WA 98154-1192
(206) 624-3600

Respectfully submitted, this 19th day of April 2006, by the parties:

/s/

Paul J. Kundtz, WSBA #13548
RIDDELL WILLIAMS P.S.
1001 Fourth Avenue Plaza, Suite 4500
Seattle, WA 98154
Tel: (206) 624-3600
Fax: (206) 389-1708
pkundtz@riddellwilliams.com

/s/

Douglas A. Hofmann, WSBA #6393
John A. Knox, WSBA #12707
601 Union Street, Suite 4100
Seattle, WA 98101-2380
Tel. (206) 340-1000
Fax (206) 628-6611
dhofmann@wkg.com

Carolyn M. Branthoover
Douglas J. Simmons
KIRKPATRICK & LOCKHART
NICHOLSON GRAHAM LLP
525 Smithfield Street
Tel: (412) 355-6500
Fax: (412) 355-6501
cbranthoover@kl.com

Elisa P. Pizzino
Debra Kackley
Novelis Corporation
6060 Parkland Boulevard
Cleveland, OH 44124-4185
Tel. (440) 423-6918
Fax: 440-423-6663
elisa.pizzino@novelis.com

Attorneys for Plaintiffs,
REYNOLDS METALS COMPANY
and ALCOA INC.

Attorneys for Defendants,
ALCAN INC. and ALCAN ALUMINUM
CORPORATION

The Honorable Robert J. Bryan

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**REYNOLDS METALS COMPANY and
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**NATIONAL UNION FIRE INSURANCE
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**ALCAN INC. and ALCAN ALUMINUM
CORPORATION,**

Defendants.

No. C04-0175RJB

PRETRIAL ORDER

TRIAL DATE: MAY 1, 2006

JURISDICTION

Jurisdiction is vested in this Court by virtue of diversity under 28 U.S.C. § 1332

(a)(1).

CLAIMS AND DEFENSES

Plaintiffs Reynolds Metals Company and Alcoa Inc. (collectively “Reynolds” or “Plaintiffs”) will pursue the following claims at trial:

- Reynolds claims that Defendant Alcan Inc. and Alcan Aluminum Corporation (collectively, “Alcan” or “Defendants”) gave and breached an implied warranty of merchantability in connection with their sale of aluminum alloy 5083-H321 to Reynolds.

- Reynolds claims that Alcan gave and breached an implied warranty of fitness of its 5083-H321 for marine application.

- Reynolds claims that Alcan is obligated to indemnify Plaintiffs under a theory of implied contractual indemnification for Reynolds’ damages resulting from their purchase/resale of Alcan’s 5083-H321.

- Reynolds claims that Alcan negligently misrepresented the nature of Alcan’s 5083-H321 by failing to disclose material information about the product that it had a duty to disclose.

Defendants will pursue the following affirmative defenses at trial:

- Defendants deny each of the Plaintiffs’ claims.

- The allegations about implied indemnity fail to state a claim against either Defendant upon which relief may be granted, or are redundant with the breach-of-warranty claims.

- The allegations of negligent misrepresentation and/or nondisclosure fail to state a claim upon which relief may be granted against either Defendant, because of the economic loss rule.

1 • The damages being claimed under a theory of misrepresentation were
2 caused in whole or in part by fault on the part of Plaintiffs.

3 • Plaintiffs failed to mitigate their damages including by failing to pay claims
4 consistent with remedy limits, disclaimers, and choice of Virginia law in terms and
5 conditions specified by RASCO documents in sales to boat builders.
6

7 **Plaintiffs' response to Defendants' affirmative defenses:**

8 • Reynolds denies Defendants' affirmative defenses and all other defenses
9 asserted by Defendants.

10 **ADMITTED FACTS**

11 **The following facts are admitted by the parties:**

12 1. In the late 1990s, Reynolds Aluminum Supply Company ("RASCO") was a
13 division of Reynolds Metals Company. RASCO's business was metals distribution.

14 **In addition, Plaintiffs contend as follows:**

15 1. In the late 1990s and early 2000s, the Washington state branch of RASCO
16 made a number of purchases of an aluminum alloy/temper product known as "5083-H321"
17 from Alcan Rolled Products Company, an operating division of Defendants Alcan Inc. and
18 Alcan Aluminum Corporation.

19 2. RASCO resold Alcan's 5083-H321 to boat builders in the Pacific
20 Northwest, and the boat builders incorporated Alcan's 5083-H321 into more than 300
21 boats, including passenger ferries, government patrol boats, commercial fishing boats and
22 pleasure craft.

23 3. Beginning in 2000 and continuing thereafter, reports of corrosion on boats
24 constructed with Alcan's 5083-H321 were brought forward by various boat builders and
25 boat owners.
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1 4. In response to the reports of corrosion/cracking problems on boats,
2 Reynolds and Alcan established a group known as the Aluminum Boat Solutions Team
3 (the "Boat Team") to work with the boat builders, boat owners, and the United States
4 Coast Guard to investigate the problems, ascertain their severity and implications, and
5 resolve them.

6 5. To date, Reynolds has paid for all of the boat inspection and repair
7 activities.

8 6. Marine applications, including boat building, were among the customary
9 and ordinary applications for aluminum alloy 5083-H321 during the period 1998-2001.

10 7. Alcan's 5083-H321 as made between 1998 and 2001 was not suitable for
11 use in marine application because the stabilization temperature Alcan chose to use in its
12 manufacture caused it to be sensitized to intergranular corrosion and stress corrosion
13 cracking.

14 8. At the time of the sales at issue, Alcan was aware that its 5083-H321
15 susceptible to intergranular corrosion and stress corrosion cracking and that it was not
16 suitable for use in marine applications.

17 9. At the time of the sales at issue, Alcan was aware that its 5083-H321 was
18 being purchased for resale into marine applications.

19 10. At the time of the sales at issue, Alcan failed to disclose to RASCO that its
20 5083-H321 was made in a way that caused it to be susceptible to intergranular corrosion
21 and stress corrosion cracking and that it was not suitable for marine applications.

22 11. At the time of the sales at issue, Alcan failed to disclose to RASCO how its
23 5083-H321 was manufactured, including the temperature at which it was stabilized.

24 12. At the time of the sales at issue, Alcan failed to disclose to RASCO that it
25 was manufacturing 5083-H321 in a way that differed from the way it previously made it.
26

1 13. Alcan's 5083-H321 as made between 1998 and 2001 was not commercially
2 sound.

3 14. Alcan's conduct in the manufacture and sale of its 5083-H321 did not meet
4 the standard of care followed within the aluminum manufacturing industry.

5 15. Alcan's conduct described above, including its breaches of warranties and
6 misrepresentation, caused Reynolds to incur substantial damages.

7 16. Reynolds' current damages are approximately \$59.6 million, including
8 approximately \$57.2 million for paid settlements with boat owners and boat builders, and
9 \$2.4 million for The Glosten Associates' consulting services associated with these
10 activities. Reynolds is entitled to recover and is seeking prejudgment interest on all these
11 damages, in an amount of approximately \$15.5 million as allowed by law.

12 **In addition, Defendants contend as follows:**

13
14 1. In 1999-2001 Reynolds and Alcoa were very large companies and were
15 sophisticated manufacturers and distributors of aluminum alloy products that knew or
16 should have known that North American producers did not produce 5083-H321 under a
17 process that insured corrosion resistance in marine applications.

18 2. Until May 2000, when Reynolds was acquired by Alcoa, Reynolds did
19 some of its business under the name of "RASCO."

20 3. Starting with Alcoa's acquisition of Reynolds in May 2000, and until
21 November 2001, RASCO was one of the names under which Alcoa did business.

22 4. The ordinary purposes for which 5083-H321 alloy is used, and for which it
23 was used during the time period at issue in this case, was for use in rail cars, dump truck
24 bodies, and other over-the-road transportation vehicle components.

25 5. The 5083-H321 sold to Reynolds/Alcoa by Alcan Aluminum Corporation in
26 1999-2001 was fit for use in rail cars, dump truck bodies, and other over-the-road

1 transportation vehicle components.

2 6. Alcan Aluminum Corporation told Reynolds in 1999 that 5083-H321 made
3 by Alcan Aluminum Corporation is not guaranteed for marine use.

4 7. In the late 1960s, Reynolds developed, and registered with the Aluminum
5 Association, the H116 temper as a marine temper for aluminum alloys.

6 8. Reynolds and Alcoa both knew before 1998 that H116 is the marine temper
7 for aluminum alloys in North America.

8 9. 5083 was available on the market during 1999-2001 in H116 temper.

9 10. In 1999-2001, Alcoa believed 5083-H321 was unsuitable for marine use.

10 11. The custom in the aluminum industry was that merchants such as
11 Reynolds/Alcoa ordered aluminum products according to the ASTM B 209 standard.

12 12. Reynolds knew in 1999-2001 that the ASTM B 209 standard required
13 photomicrographic analysis of each lot of H116 to check for aluminum-magnesium
14 precipitate on the grain boundary.

15 13 Reynolds knew in 1999-2001 that testing requirements for the H116 temper
16 under the ASTM B 209 standard included tests for susceptibility to exfoliation corrosion.

17 14 Reynolds knew in 1999-2001 that testing requirements for H321 temper
18 under the ASTM B 209 standard did not include tests for any type of corrosion.

19 15 During 1999-2001, Reynolds ordered and obtained on the market 5083-
20 H116 that met the ASTM B 209 standard.

21 16. During 1999-2001, Reynolds ordered 5083-H321 from Alcan Aluminum
22 Corporation that met the ASTM B 209 standard.

23 17. All 5083-H321 that Reynolds/Alcoa purchased from Alcan Aluminum
24 Corporation during 1999-2001 met the ASTM B 209 standard.

25 18. Reynolds/Alcoa did not require in its orders for 5083-H321 that the
26

1 aluminum have DNV certification.

2 19. During 1999-2001, Reynolds/Alcoa knew the 5083-H321 alloy they
3 purchased from Alcan Aluminum Corporation was not certified by DNV.

4 20. Neither defendant selected the alloy or the temper in connection with any of
5 the purchases of aluminum that give rise to the claims that are being asserted.

6 21. Reynolds/Alcoa did not rely on the skill or judgment of either of the
7 defendants to select either the alloy or the temper in connection with any of the purchases
8 of aluminum by Reynolds/Alcoa that give rise to the claims that are being asserted against
9 the defendants.

10 22. If Reynolds/Alcoa was relying on the skill or judgment of either defendant
11 to select either the alloy or the temper in connection with any of the purchases that give
12 rise to the claims that are being asserted, the defendant(s) did not know that.

13 23. The defendants did not know the particular purpose(s) for which
14 Reynolds/Alcoa was making purchases of 5083-H321 alloy that are at issue.

15 24. Reynolds/Alcoa resold at least some of the 5083-H321 alloy that it
16 purchased from Alcan Aluminum Corporation based on representations to its customers
17 that the goods had qualities that Reynolds/Alcoa knew neither defendant had certified the
18 5083-H321 to have.

ISSUES OF LAW

The following is Plaintiffs' statement of the issues of law to be determined by the Court:

1. Did the Alcan Defendants breach the implied warranty of merchantability in connection with their sale of aluminum alloy 5083-H321 to RASCO by selling a product that was not fit for one or more of the ordinary purposes to which it customarily was put?

2. Did the Alcan Defendants give an implied warranty of fitness for a particular purpose – use in marine applications – in connection with their sale of aluminum alloy 5083-H321 to RASCO?

3. Did the Alcan Defendants breach the implied warranty of fitness for a particular purpose in connection with their sale of aluminum alloy 5083-H321 to RASCO?

4. Are the Alcan Defendants liable to Reynolds under a theory of implied contractual indemnification for Reynolds' damages resulting from RASCO's purchase and resale of Alcan's 5083-H321?

5. Did the Alcan Defendants misrepresent the nature of Alcan's 5083-H321 to RASCO?

The following is Defendants' statement of additional issues of law to be determined by the Court:

6. Do the allegations relating to implied indemnity state a claim upon which relief may be granted, or is such a claim barred as redundant with the breach of warranty claims being asserted?

7. In light of the economic loss rule, do the allegations of negligent misrepresentation fail to state a claim upon which relief may be granted?

1 8. If the claim for negligent misrepresentation is tried, what percentage of any
2 damages were proximately caused by contributory fault on Reynolds/Alcoa's part?

3
4 9. If the claim for negligent misrepresentation is tried, and if the evidence
5 presented at trial indicates that Judge Lasnik's ruling that Alcan Aluminum Corporation
6 had, as a matter of law, an affirmative duty to disclose certain facts to Reynolds/Alcoa
7 because the facts were peculiarly within Alcan Aluminum Corporation's knowledge
8 should be withdrawn, may the trial court do so, and should the trial court do so?
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EXPERT WITNESSES

The names and addresses of the expert witnesses to be used by each party at the time of trial and the general nature of their testimony are as follows:

On behalf of Plaintiffs:

1. James Towers
3530 South Fox Spit Road
Langley, Washington
(will testify – live, or by deposition if unavailable)
Mr. Towers, a long-time professional in the field of naval engineering and marine architecture, generally would testify about 5083-H321's common use as a marine alloy/temper combination throughout the 1980s-early 2000s. He also would testify regarding several marine certification societies, their involvement with aluminum vessel construction, and their recognition of 5083-H321 for use in marine applications. He would testify regarding the interactions between metal distributors, the U.S.C.G., and boat builders, and the reuse/resale of excess project materials. Mr. Towers also may testify regarding his role in the investigation of the boat problems at issue in this litigation.

On behalf of Defendants:

1. Scott Goodrich
Business Address:
Pechiney Rolled Products, LLC
P.O. Box 68
Century Road
Ravenswood, West Virginia 26164
(will testify – live or by deposition if unavailable)
Mr. Goodrich has had 26 years working in aluminum alloy development and manufacture. He will generally testify that during the period 1999 through 2001 the H321 and H116 tempers were not interchangeable for marine applications. The two tempers were processed differently and only the –H116 temper was subject to corrosion testing, and that the process route for –H321 at Ravenswood would not necessarily meet the corrosion requirements of the –H116 temper.

1 **Additionally, the names and addresses of the expert witnesses who may be**
2 **used by each party at the time of trial and the general nature of their testimony are as**
3 **follows:**

4 **On behalf of Plaintiffs:**

- 5 1. Gary Schmauch
6 2230 S. Steen Rd
7 Veradale, WA 99037
8 (may testify – live, or by deposition if unavailable)
9 Mr. Schmauch, a metallurgist and long-time participant in the aluminum
10 manufacturing industry, generally would testify about the use of 5083-H321
11 for marine applications, the known corrosion susceptibility effect of
12 stabilizing 5083-H321 at 150°C, the interactions between the aluminum
13 manufacturing industry and the metal distribution market, and the best
14 commercial practices used within the aluminum manufacturing industry in
15 connection with the manufacture and sale of structural high magnesium
16 alloys such as 5083-H321.
- 17 2. Rudolph G. Buchheit
18 2464 Caterbury Road
19 Columbus, Ohio 43221
20 (may testify – live, or by deposition if unavailable)
21 Professor Buchheit generally would testify regarding professionals' long-
22 standing knowledge of the sensitization phenomenon in 5xxx-series alloys
23 and the resulting corrosion risks, the methods of testing 5xxx-series alloys
24 for corrosion susceptibility, the type and degree of susceptibility found with
25 Alcan's 5083-H321, and the validity of the Boat Team and Alcoa's
26 corrosion testing of Alcan's 5083-H321.

20 **On behalf of Defendants:**

- 21 1. Thomas J. Summerson
22 4711 E. 36th Court
23 Spokane, Washington 99223
24 (may testify – live or by deposition if unavailable)
25 Mr. Summerson is an aluminum corrosion specialist with a long career in
26 the aluminum industry and as a representative of Kaiser Aluminum he
 represented his company in development of corrosion resistant tempers for
 the 5xxx alloys. He would generally testify that since 1970's, the North
 American Aluminum Industry, including representatives of the Plaintiffs,
 addressed the corrosion potential of the 5xxx alloys by developing and

adopting the –H116 and –H117 tempers, and that during the period of sales at issue, only the –H116 temper was recognized by North American Aluminum industry standards to require process and testing controls to prevent intergranular corrosion.

OTHER WITNESSES

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are as follows.

On behalf of Plaintiffs:

1. Caroline E. Bell
30308 104th Avenue Southeast
Auburn, WA 98002
(will testify – live, or by deposition if unavailable)
Ms. Bell generally would testify regarding RASCO/Integris purchases of 5083-H321 from Alcan, RASCO's operations, Alcan's visits to RASCO offices, RASCO's marine program, and the initial investigation of the boat problems.
2. Francine Bovard
Corporate Address:
100 Technical Drive
Alcoa Technical Center
Alcoa Center, PA 15069
(will testify – live)
Ms. Bovard generally would testify regarding the Aluminum Boat Solutions Team activities and the analysis of Alcan's 5083-H321.
3. Dave Custers
Corporate Address:
1 Lappan's Lane
Kingston, ON (Canada) K7K6Y8
(will testify – live, by agreement of Alcan's counsel)¹
Mr. Custers generally would testify regarding the production of 5xxx-series alloys at Alcan's Kingston, Ontario, Canada facility, the characteristics of Alcan's 5083-H321, the interactions between Kingston and Alcan's Cleveland IPG, and the initial investigation of the boat problems.

¹ Alcan's counsel has agreed to bring three Alcan witnesses for trial during Plaintiffs' case and four additional Alcan witnesses requested by Plaintiffs during Alcan's case.

- 1 4. Robert Fulton
2 *Corporate Address:*
3 Novelis Corporation
4 Mayfield Heights, OH
5 (will testify – live, by agreement of Alcan’s counsel)
6 Mr. Fulton generally would testify regarding the production, testing and use
7 of 5083-H321, his interactions with RASCO’s Washington State branch, the
8 Cleveland IPG, and the Alcan Kingston manufacturing facility, and his
9 involvement in the investigation of the boat problems.
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- 12 5. Paul Jeffrey
13 722 Holgate Crescent
14 Kingston, ON (Canada)
15 (will testify – by deposition)
16 Mr. Jeffrey generally would testify regarding his activities and research for
17 Alcan’s Kingston Research Development Centre, his interaction with
18 Alcan’s manufacturing facilities regarding the production of 5xxx-series
19 alloys, and his work for Alcan on the Aluminum Boat Solutions Team.
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- 21 6. Trevor Lewis
22 20 Forest Drive
23 Kingston, ON K7L 4V1
24 (will testify – live, by agreement of Alcan’s counsel)
25 Mr. Lewis generally would testify regarding his activities and research for
26 Alcan’s Kingston Research Development Centre, his interaction with
Alcan’s manufacturing facilities regarding the production of 5xxx-series
alloys, and his work relating to aluminum standards.
7. David Lloyd
106 Nicholson Point
Bath, ON (Canada)
(will testify – by deposition)
Dr. Lloyd generally would testify regarding the manufacture and use of
5083-H321 and Alcan’s investigation of the same.
8. Matthew Nichols (or other representative of Nichols Brothers Boat Builders)
Corporate Address:
Nichols Brothers Boat Builders, Inc.
P.O. Box 580
5400 S. Cameron Road
Freeland, WA 98249
(will testify – live, or by deposition if unavailable)
Mr. Nichols generally would testify regarding the use of 5083-H321 for
marine vessel construction and the investigation of the boat problems.

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9. Randy Pulley
3601 42nd Avenue Northeast
Tacoma, WA 98422
(will testify – live, or by deposition if unavailable)
Mr. Pulley generally would testify regarding Integris’ purchases and sales, interaction with aluminum manufacturers, and the investigation of the boat problems.
10. Steve Simpson
Corporate Address:
1 Lappan’s Lane
Kingston, ON K7K6Y8 (Canada)
(will testify – live, by agreement of Alcan’s counsel)
Mr. Simpson generally would testify regarding the production of 5xxx-series alloys at Alcan’s Kingston, Ontario, Canada facility, the characteristics of Alcan’s 5083-H321, the interactions between Kingston and Alcan’s Cleveland IPG, and the initial investigation of the boat problems.
11. Richard Strong
Corporate Address:
The Glosten Associates
1201 Western Ave., Suite 200
Seattle, WA 98101-2921
(will testify – live)
Mr. Strong generally would testify regarding the Aluminum Boat Solutions Team activities, the analysis of Alcan’s 5083-H321, and damages.
12. James Greg Sutherland
Corporate Address:
Pechiney Cast Plate
3200 Fruitland Avenue
Vernon, California 90058
(will testify – live, by agreement of Alcan’s counsel)
Mr. Sutherland generally would testify regarding the procedures and sales of Alcan’s Cleveland IPG, the development of 5xxx-series alloy production by Alcan, and Alcan’s investigation of the boat problems (including the Aluminum Boat Solutions Team activities).
13. William Taylor
Corporate Address:
Integris Metals (Ryerson Tull)
2306 "B" Street NW

1 Auburn, Washington 98001

(will testify – live, or by deposition if unavailable)

2 Mr. Taylor generally would testify regarding RASCO/Integris' purchases
3 and sales, interaction with aluminum manufacturers and boat builders,
4 RASCO's marine program, and the investigation of the boat problems.

5 14. Lynn Voss

1847 Second Street

Kirkland, WA 98033

(will testify – live, or by deposition if unavailable)

7 Mr. Voss generally would testify regarding RASCO's purchases of 5083-
8 H321 from Alcan, RASCO's operations, Alcan's visits to RASCO offices,
and RASCO's marine program.

9 15. Paul Wycliffe

548 Braeside Crescent

Kingston, ON (Canada)

(will testify – live, by agreement of Alcan's counsel)

11 Mr. Wycliffe generally would testify regarding the analysis of Alcan's
12 5083-H321 after the boat problems arose and his work for Alcan.

13 16. Erik Young

476 Jennifer Lane

Rays Lake, IL 60030

(will testify – live, by agreement of Alcan's counsel)

15 Mr. Young generally would testify regarding his work as an outside
16 salesperson for Alcan, including his interactions with RASCO's
17 Washington State branch, and Alcan's sales of 5xxx-series alloys.

18 **On behalf of Defendants:**

19 1. Caroline E. Bell

30308 104th Ave Southeast

Auburn, Washington 98002

(will testify - live)

21 Ms. Bell will generally testify about the Reynolds, Auburn, Marine
22 Program, her knowledge concerning the differences and similarities
23 between the tempers and the sources of her understanding and well as her
24 representations to customers concerning the differences in the tempers and
alloys.

25 2. Todd Brown

1720 Saint Marks Church Road

Building 2-2E

1 Burlington, NC 27215

(will testify- live or by deposition)

2 Mr. Brown will testify that he received disclaimer from Alcan as an
3 employee of Reynolds that Alcan's 5083-H321 was not guaranteed in
4 marine applications and transmitted that information to Reynolds Auburn.

5 3. Harold Bushfield

149 Harvest Lane

Harrison City, PA 15636

6 (will testify – live, by agreement of Alcoa's counsel)

7 Mr. Bushfield will generally testify concerning the industry understanding
8 concerning the corrosion requirements in the 5xxx alloys, the confusion
9 among users between the -H116 and -H321 tempers, and the industry effort
10 to address the confusion issue.

11 4. Ernest Chiarella

176 County Route 42

Oswego, NY 13126

(will testify - by deposition)

12 Mr. Chiarella generally will testify about production operations concerning
13 5xxx alloys at Alcan's Oswego facility and the facilities marine
14 designations.

15 5. David Custers

Business Address:

1 Lappan's Lane

Kingston, Ontario (Canada) K7K6Y8

(will testify -live)

18 Mr. Custers generally would testify regarding production of 5xxx series
19 alloys at Alcan's Kingston, Ontario, Canada facility, the interactions
20 between the Kingston plant and Alcan's Cleveland IPG group and the initial
21 investigations of the boat issues.

22 6. Polly Fabry

3724 Glenshannon Lane

Flower Mound, TX 75022

(will testify – live or by deposition)

23 Ms Fabry generally will testify concerning the disclaimer she gave to
24 Reynolds personnel that Alcan's 5083-H321 was not guaranteed for marine
25 applications in her role as inside sales.

26 7. Robert Fulton

Business Address:

1 Novelis Corporation
2 Mayfield Heights, OH

(will testify – live)

3 Mr. Fulton will testify concerning his interactions with Reynolds Auburn
4 Branch, his role in the IPG group and his involvement in the investigations
of the boat problems.

5 8. Amy Gonyer

21 Chestnut Drive

6 Blue Grass, IA 52726

(will testify-live, by agreement of Alcoa's counsel)

7 Ms. Gonyer will generally testify about her presentations to the Reynolds
8 Auburn facility and boat builders, her understanding to the differences in
9 production practices at Alcoa Davenport for 583-H321 and H116, Alcoa's
10 willingness to sell 5083-H321 for marine applications and her knowledge
concerning the corrosive characteristics of Alcoa Davenport's 5083-H321.

11 9. ShaRee Hansen

1379 Yellowstone Road

12 Cleveland Heights, Oh 44121

(will testify - live)

13 Ms. Hansen will generally testify concerning her role as inside sales person
14 for Alcan's IPG unit and the fact that she informed Lynn Voss and Carrie
Bell that Alcan's 5083-H321 was not guaranteed for marine applications.

15 10. Chester H. Holtyn

2541 Liberty Hill Road

16 Powhatan, VA 23139

17 (will testify - by deposition)

18 Mr. Holtyn will generally testify about his role and Reynolds developing
19 the marine market and participating on behalf of his company in designating
appropriate marine alloys and tempers.

20 11. Paul Jeffery

722 Holgate Crescent

21 Kingston ON (Canada)

22 (will testify - by deposition)

23 Mr. Jeffery will generally testify concerning the participation of Reynolds
24 and Alcoa on the industry committees and the standards adopted for
corrosion resistant tempers. He will also testify about his activities at
25 Alcan's Kingston Research and Development Centre and his work. on the
26 Aluminum Boat Solutions Team.

1 12. Trevor Lewis
2 20 Forest Drive
3 Kingston, ON K7LAV I
4 Canada

(will testify – live)

Mr. Lewis generally would testify regarding his activities in the standards making process and his interaction with the manufacturing facilities concerning the production of the 5xxx alloys.

6 13. Dr. David Lloyd
7 106 Nicholson Point
8 Bath, ON
9 Canada

(will testify - by deposition)

Dr. Lloyd generally will testify about the manner of fabricating 5083-H321 as required by the appropriate standards and the differences between it and the -H116 temper as well as Alcan's review of the boat problems at issue in this case.

12 14. Jesse Munson
13 Business address:
14 17183 Bennett Road
15 Mount Vernon WA 98273

(will testify - live)

Mr. Munson will generally testify concerning his investigation of the problems of the Alcan metal and his conclusions concerning the cause of the problem.

17 15. William Munson
18 18130 Sunset Ave.
19 Edmonds, WA 98026

(will testify -live or by deposition if unavailable)

Mr. Munson will generally testify how Reynolds caused him to use the Alcan metal to cut their inventory costs and whether he would use metal for boat construction if told it was not guaranteed for marine construction.

22 16. Mark T. Murphy
23 4328 Southwest Henderson Street
24 Seattle, WA 98136

(will testify-live, by agreement of Alcoa's counsel)

Mr Taylor generally will testify concerning communications between Alcoa and Reynolds on the use of 5083-H321 in marine applications and the Amy Gonyer presentation.

1 17. Matthew Nichols
2 Business Address:
3 Nichols Brothers Boat Builders, Inc.
4 P.O. Box 580
5 5400 S. Cameron Road
6 Freeland, WA 98249

(will testify - live or by deposition if unavailable)

Mr. Nichols will generally testify concerning the use of Lloyd's certified 5083-H321, his understanding of the certification and his willingness to use metal in boat construction that he had been informed was not guaranteed for marine applications.

8 18. Randy Pulley
9 3601 42nd Avenue Northeast
10 Tacoma, WA 98422

(will testify - live or by deposition if unavailable)

Mr. Pulley will generally testify about his investigation of the boat problems and his communications with customers on the issue.

12 19. George Pursey
13 31660 Crabtree Lane
14 Solo, Ohio 44139

(will testify- live or by deposition if unavailable)

Mr. Pursey will generally testify about the sales and procedures of Cleveland TPG unit and its market competition. How Alcan developed the 5083-H321 product in this case. He will describe the purpose of sales call and the nature of sales into the distribution market. He will also address Alcan's investigation of the boat problems.

18 20. Steve Simpson
19 Business Address:
20 1 Lappen's Lane
21 Kingston, ON K.7K6Y8
22 Canada

(will testify - live)

Mr. Simpson generally will testify regarding the industry understanding of the -H116 and -H321 tempers, how Alcan developed 5083-H321 at issue, the interactions between Kingston and Cleveland IPG, considerations in developing a product and the investigations of the boat problems.

24 21. J. Greg Sutherland
25 Business Address:
26 Pechiney Cast Plate
3200 Fruitland Avenue

Vernon, California 90058

(will testify - live)

Mr. Sutherland will generally discuss Alcan 1PG sales and marketing procedures, the development of the 5xxx alloys and the investigation of the boat problems.

22. William Taylor
Business Address:
Integris Metals(Ryerson Tull)
2306 "B" Street
Auburn, Washington 98001
(will testify-live)

Mr Taylor will generally testify regarding his role in the marine marketing program. The manner in which Reynolds sold to customers and the interaction between Reynolds, aluminum suppliers and boat building customers.

23. Lynn Voss
1847 Second Street
Kirkland, WA 98033
(will testify-live)

Mr. Voss will generally testify about his development of the marine marketing program and its objectives, interaction with Alcan representatives, his understanding of Alcan's disclaimer and the investigation of claims concerning the Alcan metal.

24. Paul Wycliffe
548 Braeside Crescent
Kingston, ON K7M5A6
Canada
(will testify - live)

Mr. Wycliffe generally testify will about the standards and the appropriate temper for marine applications and how products are made pursuant to the standards to address market needs and the requirement that one specify the H 116 temper for applications where corrosion resistance was required, his work for the boat solutions team and his work at KRDC.

25. Erik Young
476 Jennifer Lane
Rays Lake, 1160030
(will testify-live)

Mr. Young generally will testify regarding his work in outside sales for Alcan IPG, his visits to Reynolds Auburn and conversations with Reynolds employees and matters involving sales of Alcan's 5083-H321.

26. Past and present representatives of ACB, Aluminum Chambered Boats
Bellingham, Washington
(will testify – live)

Past and present representatives of ACB, Aluminum Chambered Boats, including but not limited to Larry Wieber and Michael Baker may testify about ACB boats had historically used 5086 and that they were approached in 1998 by Reynolds representatives about using a new, equal and improved material for their aluminum boats – 5083-H321. ACB may also testify how they relied upon the representations and recommendations of Reynolds and used 5083-H321 in production. In addition, they may also testify about the lawsuit that ACB filed against Reynolds.

Additionally, the names and addresses of witnesses, other than experts, who may be used by each party at the time of trial and the general nature of the testimony of each are as follows.

On behalf of Plaintiffs:

1. Robert Bell
Integris Metals (Ryerson Tull)
Corporate Address:
455 85th Avenue, NW,
Minneapolis, MN 55433
(possible witness – live)
Mr. Bell generally would testify regarding RASCO/Integris' purchases and sales of 5083-H321, its marine program, and the investigation of boat damage.
2. Robert L. Brown, Keith Whittemore, or other representative of Kvichak Marine Industries
Corporate Address:
469 Bowdoin Place
Seattle, WA 98107
(possible witness – live, or by deposition if unavailable)
Mr. Brown generally would testify regarding the use of 5083-H321 for marine vessel construction and the investigation of the boat problems.

- 1 3. Heather Campbell
2 16 66th Place
3 Long Beach, CA 90803
4 (possible witness – by deposition)
5 Ms. Campbell generally would testify regarding her work as an outside
6 salesperson for Alcan, including her interactions with RASCO's
7 Washington State branch, along with her sales experiences with other
8 aluminum manufacturers in connection with 5xxx-series alloys.
- 6 4. Rainer Eckart
7 *Corporate Address:*
8 Northwest Labs
9 241 South Holden Street
10 Seattle, WA 98108
11 (possible witness – live)
12 Mr. Eckart generally would testify regarding the testing and inspection of
13 Alcan 5083-H321 and investigation of the boat problems.
- 11 5. Polly Fabry
12 3724 Glenshannon Lane
13 Flower Mound, TX 75022
14 (possible witness – by deposition)
15 Ms. Fabry generally would testify regarding her work as an inside
16 salesperson for Alcan, including the IPG procedures and her interactions
17 with RASCO's Washington State branch and with Alcan's Kingston
18 manufacturing facility.
- 17 6. Kevin Gilmore
18 1325 North Sherwood Street
19 Spokane, WA 99201
20 (possible witness – live, or by deposition if unavailable)
21 Mr. Gilmore generally would testify regarding his work as an outside
22 salesperson for Alcan, including his interactions with RASCO's
23 Washington State branch, along with his sales experiences with other
24 aluminum manufacturers in connection with 5xxx-series alloys.
- 22 7. Kevin Greenawalt
23 17400 Old Tannery Trail
24 Chagrin Falls, OH 44023
25 (possible witness – live, or by deposition if unavailable)
26 Mr. Greenawalt generally would testify regarding the procedures and sales
of Alcan's Cleveland IPG.

1 8. Donna Grill (Lloyd's Record Custodian)
2 *Corporate Address:*
3 Lloyd's Registry of Shipping
4 1401 Enclave Parkway
5 Suite 200
6 Houston, TX 77077
(possible witness – by deposition)
7 Mr. Grill generally would testify regarding the authenticity of documents
8 produced by Lloyd's Registry of Shipping in this litigation.

9 9. Sharee Hansen
10 1379 Yellowstone Road
11 Cleveland Heights, OH 44121
(possible witness – live, or by deposition if unavailable)
12 Ms. Hansen generally would testify regarding her work as an inside
13 salesperson for Alcan, including the IPG procedures and her interactions
14 with RASCO's Washington State branch and with Alcan's Kingston
15 manufacturing facility.

16 10. Eugene Iacino
17 320 Drummond Avenue
18 Hubbard, OH 44425
(possible witness – by deposition)
19 Mr. Iacino generally would testify regarding the certification of Alcan's
20 Oswego, NY facility by Lloyd's Registry of Shipping, and his interaction
21 with Alcan and others after the boat problems were discovered.

22 11. Douglas E. Johnson
23 14004 253rd Avenue Southeast
24 Issaquah, WA 98027
(possible witness – live, or by deposition if unavailable)
25 Mr. Johnson generally would testify regarding RASCO/Integris' purchases
26 and sales, interaction with aluminum manufacturers, and the investigation
of the boat problems.

12. Rebecca Meaker
10416 Andover Drive
Twinsburg, OH 44087
(possible witness – live, or by deposition if unavailable)
Ms. Meaker generally would testify regarding her work in inside sales for
Alcan, including the IPG procedures and her interactions with RASCO's
and with Alcan's Kingston manufacturing facility.

- 1 13. William E. Munson (or other representative of Wm. E. Munson Co.)
2 18130 Sunset Way
3 Edmonds, WA 98026
4 (possible witness – live or by deposition if unavailable)
5 Mr. Munson generally would testify regarding the use of 5083-H321 for
6 marine vessel construction and the investigation of the boat problems.
- 7 14. Edward Peckham or other representative of Russel Metals
8 Halifax, Nova Scotia (Canada)
9 (possible witness – live)
10 Mr. Peckham generally would testify regarding Russel Metals' purchases of
11 5083-H321 from Alcan for resale into marine application, the boat
12 corrosion that was encountered, and Alcan's refusal to contribute to the
13 resulting repairs.
- 14 15. Dirk B. Rozema (or other representative of Rozema Boat Works Inc.)
15 *Corporate Address:*
16 111130 Bayview-Edison Road
17 Mount Vernon, WA 98273
18 (possible witness – live, or by deposition if unavailable)
19 Mr. Rozema generally would testify regarding the use of 5083-H321 for
20 marine vessel construction and the investigation of the boat problems.

21 Plaintiffs also reserve the right to use at trial portions of the corporate deposition
22 testimony provided by designees of Alcan Aluminum Corporation and/or Alcan Inc. and
23 taken pursuant to F.R.C.P. 30(b)(6).

24 **On behalf of Defendants:**

- 25 1. David Bonney
26 Business Address:
Novelis Corporation
Oswego, New York
(possible witness-live or by deposition if unavailable)
Mr. Bonney will generally testify concerning the practices in Oswego of
making and certifying products in accordance with customer orders.
2. Heather Campbell
16 66th Place
Long Beach, CA 90803
(may testify-by deposition)
Ms. Campbell will generally testify about her knowledge of Reynolds
Auburn re-sales of Alcan 5083-H321 when Reynolds began buying the

Alcan metal and her understanding concerning Reynolds sales into the over the road market.

3. William Dowdle
125 Ellen Street
Oswego, NY 13126
(possible witness – live or by deposition if unavailable)
Mr. Dowdle will testify concerning the Oswego facilities marine certification.

4. Phil Epp
Business Address:
Novelis Corporation
Oswego, NY
(possible witness-live or by deposition if unavailable)
Mr. Epp generally will testify concerning the production of 5xxx alloys at Alcan's Oswego facility and the tempers intended for marine applications.

5. Kevin Gilmore
1325 North Sherwood Street
Spokane, WA 99201
(possible witness- live or by deposition if unavailable)
Mr. Gilmore will generally testify concerning his work as an outside sales person for Alcan and Reynolds Auburn's knowledge of the distinction in tempers in the 5xxx alloys in connection with marine applications along with general market practices concerning purchase and resale of marine grade alloys from other manufacturers.

6. Donna Grill (Lloyd's Record Custodian)
Business Address:
Lloyd's Registry of Shipping
1401 Enclave Parkway
Suite 200
Houston, TX 77077
(possible witness- by deposition)
Ms. Grill generally will testify concerning the authenticity of documents produced by Lloyd's Registry of Shipping.

7. Eugene Iacino
320 Drummond Avenue
Hubbard, Ohio 44425
(may testify - by deposition)

Mr. Iacino generally will testify about the meaning of a plant be listed by Lloyds, its relationship to metal produced and the requirements of obtaining Lloyd's certified metal.

8. Douglas Johnson
14004253rd Avenue Southeast
Issaquah, WA 98027
(possible witness-live or by deposition if unavailable)
Mr. Johnson generally would testify about Reynolds Auburn purchases and interaction with customers and Alcon.

9. Rebecca Meaker
10416 Andover Drive
Twinsburg, OH 44087
(possible witness---live or by deposition if unavailable)
Ms. Meaker generally will testify about her role in IPG sales, her interaction with Reynolds, the Alcan Kingston facility and IPG procedures.

10. Dirk Rozema
Business Address:
111130 Bayview-Edison Road
Mount Vernon, Washington 98273
(may testify-live or by deposition if unavailable)
Mr. Rozema generally will testify about his use of the Alcan metal and whether he would have used it. if told that it was not guaranteed for marine applications.

11. Keith Whittmore
Business Address:
469 Bowdoin Place
Seattle, Washington 98107
(may testify—live or by deposition if unavailable)
Mr. Whittmore will generally testify about his business relationship with Reynolds, Auburn. His knowledge of the Alcan disclaimer and the Alcoa presentation on 5083-H321.

EXHIBITS

1. On behalf of Reynolds:

Plaintiffs anticipate offering the exhibits appearing on the list appended to this draft Pretrial Order. Beside each exhibit is a space where Defendants have indicated with an

1 “X” their stipulations of authenticity and admissibility, and a space where they have
 2 described the nature of any objection (using abbreviations such as “HS” for hearsay, “T”
 3 for irrelevant, “NF” for no foundation, etc.).

4 **2. On behalf of Alcan:**


5 Defendants anticipate offering the exhibits appearing on the list appended to this
 6 draft Pretrial Order. Beside each exhibit is a space where Plaintiffs have indicated with an
 7 “X” their stipulations of authenticity and admissibility, and a space where they have
 8 described the nature of any objection (using abbreviations such as “HS” for hearsay, “T”
 9 for irrelevant, “NF” for no foundation, etc.).

10 **ACTION BY THE COURT**

- 11 (a) This case is scheduled for trial before a jury on May 1, 2006, at 9:30 a.m.
 12 (b) Trial briefs shall be submitted to the Court on or before April 26, 2006.
 13 (c) Proposed jury instructions, proposed voir dire questions, and trial exhibits
 14 shall be submitted to the Court on or before April 26, 2006.

15 This Order has been approved by the parties as evidenced by the signature below of
 16 their counsel. This order shall control the subsequent course of the action unless modified
 17 by a subsequent order. This order shall not be amended except by order of the Court
 18 pursuant to agreement of the parties or to prevent manifest injustice.

19 DATED this 1ST day of May, 2006.

21 
 22

23 ROBERT J. BRYAN
 24 United States District Judge
 25
 26

1 FORM APPROVED:

2 /s/

3 Attorney for Plaintiffs, Reynolds Metals Company and Alcoa Inc.
4 Paul J. Kundtz, WSBA #13548 - RIDDELL WILLIAMS P.S.
5 Carolyn M. Branthoover, Douglas J. Simmons
6 KIRKPATRICK & LOCKHART NICHOLSON GRAHAM

7 /s/

8 Attorney for Defendants, Alcan Inc. and Alcan Aluminum Corporation
9 Douglas A. Hofmann, WSBA #6393; John A. Knox, WSBA #12707
10 WILLIAMS KASTNER & GIBBS PLLC
11 Eliza P. Pizzino, Debra Kackley - NOVELIS CORPORATION

12 /s/

13 Attorney for Plaintiff-in-Intervention National Union Fire Insurance Company of
14 Pittsburgh, PA
15 Earl M. Sutherland, WSBA#23928 - REED MCCLURE
16 Gregory H. Teufel, C. Scott Tate
17 SCHNADER HARRISON SEGAL & LEWIS, LLP
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